United States District Court
Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

LUZ AQUINO,

Plaintiff,

v.

CALIFORNIA RECONVEYANCE COMPANY,

Defendant.

Case No. 14-cv-01818-WHO

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS; DENYING PLAINTIFF'S MOTION FOR LEAVE TO AMEND

Re: Dkt. Nos. 10, 29

INTRODUCTION

Defendant California Reconveyance Company ("CRC") moves to dismiss pro se plaintiff Luz Aquino's complaint for invasion of privacy, negligent hiring and supervision, and violations of the Rosenthal Fair Debt Collection Practices Act, the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act. Because all five causes of action are barred by res judicata, the motion is GRANTED.

BACKGROUND

A. Prior Action

This is the second lawsuit arising from the same mortgage loan and foreclosure proceeding that Aquino has filed in this Court. In the prior action, Aquino alleged that on April 3, 2007, she purchased a property in Richmond, California (the "property") through a mortgage loan from Washington Mutual Bank, F.A. *Aquino v. JP Morgan Chase Bank N.A.*, No. 12-cv-05448-WHO (N.D. Cal. Oct. 29, 2012), Dkt. No. 54 at 7. Washington Mutual Bank, F.A. was the original holder of the deed of trust, and CRC was the trustee. *Id.* JP Morgan Chase, N.A. ("Chase") subsequently acquired the "debt, loan, and/or promissory note." *Id.* The property was eventually foreclosed on, and on August 15, 2012, CRC sold it at a public auction. *Id.*

On October 29, 2012, Aquino filed a complaint against Chase and CRC alleging causes of

action for (i) intentional misrepresentation, (ii) negligence per se, (iii) negligence, (iv) rescission, (v) wrongful foreclosure, and (vi) quiet title. *Id.* at Dkt. No. 1. Chase and CRC moved to dismiss, and on March 25, 2013, Judge Hamilton issued an order dismissing the complaint with leave to amend and spelling out, for Aquino's benefit, the elements of the six causes of action she had alleged. *Id.* at Dkt. Nos. 10, 24. Aquino filed a first amended complaint on May 13, 2013, to which Chase and CRC filed another motion to dismiss. *Id.* at Dkt. Nos. 29, 30. On September 30, 2013, I dismissed the first amended complaint without prejudice but warned Aquino that it would be her final chance to amend. *Id.* at Dkt. No. 44.

Aquino filed an erroneously titled "Third Amended Complaint" (it was actually her second amended complaint) on October 30, 2013, alleging a single cause of action for quiet title. *Id.* at Dkt. No. 45. The complaint asserted that Aquino was entitled to quiet title because the promissory note had been improperly severed from the deed of trust, and because Aquino had in fact satisfied her debt. *Id.* Chase and CRC again moved to dismiss, and on January 23, 2014, I granted the motion, dismissing the complaint with prejudice. *Id.* at Dkt. No. 54.

B. Present Action

Aquino filed the instant action on April 21, 2014. The complaint alleges five causes of action: (i) invasion of privacy; (ii) negligent hiring and supervision; (iii) violation of the Rosenthal Fair Debt Collection Practices Act; (iv) violation of the Fair Debt Collection Practices Act; and (v) violation of the Fair Credit Reporting Act. Compl. ¶¶ 10-42 (Dkt. No. 1).

The claims in the present action are centered on the same property, the same mortgage loan, and the same foreclosure proceeding as the claims in the prior action. The core allegation is that CRC attempted to collect a debt from Aquino that CRC was not entitled to collect. Attached as an exhibit to the complaint is the notice of trustee's sale from CRC's public auction of the property. *Id.* at Ex. A. The notice states that Aquino has defaulted on the mortgage loan and that CRC plans to sell the property at a public auction sale. *Id.* Aquino asserts in the complaint that she is "without specific knowledge" of the "claims and allegations" in the notice. *Id.* ¶ 6. Aquino further asserts that as a result of CRC's "deceptive and illegal acts in their attempt to collect the alleged debt," she has "suffered significant economic harm," including CRC's sale of the property,

the subsequent eviction of Aquino's son from the property, and "multiple denials of credit" due to "defendant['s] erroneous credit reporting." *Id.* ¶¶ 7-8, 19.

On July 21, 2014, CRC filed this motion to dismiss, arguing that Aquino has failed to state a claim under Federal Rule of Civil Procedure 12(b)(6) because her claims are "deficient and unintelligible," and barred both by the applicable statutes of limitation and by res judicata. Mot. 1 (Dkt. No. 11). On August 26, 2014, while the motion to dismiss was still pending, Aquino moved for leave to amend her complaint. Pursuant to Local Rule 7-1(b), I found the matters suitable for resolution without oral argument and vacated the hearing set for September 24, 2014.[1]

LEGAL STANDARD

Under Rule 12(b)(6), a district court must dismiss a complaint if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A claim is facially plausible when the plaintiff pleads facts that "allo[w] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). While courts do not require "heightened fact pleading of specifics," a plaintiff must allege facts sufficient to "raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555, 570. There must be "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft*, 556 U.S. at 678.

In deciding whether a plaintiff has stated a claim upon which relief can be granted, the court accepts the plaintiff's allegations as true and draws all reasonable inferences in favor of the plaintiff. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court is not required to accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.

[1]CRC requests judicial notice of a number of documents related to Aquino's mortgage loan and foreclosure proceeding, as well as several filings from Aquino's prior action in this Court. RJN 1-5, Exs. 1-18 (Dkt. No. 16). The documents related to the mortgage loan and foreclosure proceeding are not necessary to decide this motion, and CRC's request for judicial notice of those documents is DENIED. *See id.* at Exs. 1-8. The request for judicial notice of the filings from the prior action is GRANTED. *See id.* at Exs. 9-18.

2008).

If the court dismisses the complaint, it "should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). In making this determination, the court should consider factors such as "the presence or absence of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party and futility of the proposed amendment." *Moore v. Kayport Package Express*, 885 F.2d 531, 538 (9th Cir.1989).

Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Where a plaintiff is proceeding pro se, the court has an obligation to construe the pleadings liberally and to afford the plaintiff the benefit of any doubt. *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc). However, pro se pleadings must still allege facts sufficient to allow a reviewing court to determine whether a claim has been stated. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). A pro se complaint should be dismissed if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Haines*, 404 U.S. at 520-21 (internal quotation marks omitted).

DISCUSSION

I. CRC'S MOTION TO DISMISS

CRC argues the present action is barred by res judicata based on the judgment in Aquino's prior action in this Court. Mot. 6-8. CRC is correct.

The doctrine of res judicata, or claim preclusion, "provides that a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003) (internal quotation marks omitted). "Res judicata is applicable whenever there is (1) an identity of claims, (2) a final judgment on the merits, and (3) privity between parties." *Id.* (internal quotation marks omitted). The doctrine extends to "any claims that were raised *or could have been raised* in a prior action." *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002) (emphasis in original).

"A plaintiff need not bring every possible claim. But where claims arise from the same factual circumstances, a plaintiff must bring all related claims together or forfeit the opportunity to bring any omitted claim in a subsequent proceeding." *Turtle Island Restoration Network v. U.S. Dep't of State*, 673 F.3d 914, 918 (9th Cir. 2012).

A. Identity Of Claims

This first element is satisfied. The Ninth Circuit looks to four factors in determining whether claims in successive lawsuits are identical for res judicata purposes:

> (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.

Turtle Island, 673 F.3d at 917-18 (internal quotation marks omitted). The fourth factor is by far the most important, to the point that the Ninth Circuit has repeatedly described it as "outcome determinative." *ProShipLine Inc. v. Aspen Infrastructures Ltd.*, 609 F.3d 960, 968 (9th Cir. 2010); *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 988 (9th Cir. 2005).

Aquino's first and second actions plainly arise out of the same nucleus of facts. Lawsuits arise out of the same nucleus of facts where "they are related to the same set of facts" and "could conveniently be tried together." *Turtle Island*, 673 F.3d at 918. Aquino's current claims relate to the same mortgage loan transaction, the same foreclosure proceeding, and the same property as her previous ones. None of the conduct alleged in the current complaint occurred after the dismissal of Aquino's prior case. Although Aquino's "new" claims are asserted under different legal theories, they are based on the same core allegation as were the claims in her prior action: that CRC was not entitled to collect on the mortgage loan or foreclose on the property. Aquino cannot avoid the bar of res judicata merely by asserting new legal theories or by seeking a different remedy for the same misconduct she previously alleged. *See Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir. 1982) ("[Plaintiff] does not avoid the bar of res judicata merely because he now alleges conduct by [defendant] not alleged in his prior suit, nor because he has pleaded a new legal theory. Rather, the crucial question is whether [plaintiff] has stated in the instant suit a cause of action different from those raised in his first suit.") (footnotes omitted).

Aquino attempts to distinguish the instant case from the prior one by asserting that her current claims have "more to do with [CRC's] deceptive and illegal acts in their attempt to collect the alleged debt, as opposed to any legitimacy of [the] alleged debt." Compl. ¶ 8. But the only reason Aquino provides for why CRC's acts were deceptive or illegal is that the "alleged debt" was illegitimate. Aquino states that she is "without specific knowledge" of the debt; that CRC is a "stranger" with whom Aquino has no "contractual relationship;" that CRC failed to "verify" or "validate" the debt; that CRC provided "erroneous, fabricated amounts allegedly due and owing;" that CRC "creat[ed] an alleged debt;" and that CRC "knew it was not entitled to collect on the nonexistent debt." Compl. ¶¶ 7, 22, 28, 33, 39. Contrary to Aquino's assertion, the instant case is an attempt to relitigate the legitimacy of CRC's efforts to foreclose on the property.

The other factors relevant to the identity of claims inquiry also indicate that an identity of claims exists here. Aquino's first and second actions would rely on substantially the same evidence – namely, documentation of the mortgage loan transaction and any transfers between entities of the mortgage loan's component parts. Prosecution of the second action would threaten to impair rights established in the first, because Aquino's claims focus on whether CRC was legally entitled to collect the mortgage loan and foreclose on the property, the key issue decided in the prior case. Finally, although Aquino now seeks damages instead of quiet title, the alleged cause of Aquino's claimed harm continues to be CRC's attempt to collect an invalid debt.

B. Final Judgment in the Merits

The second element is also satisfied. "[A] dismissal for failure to state a claim under Rule 12(b)(6) is a 'judgment on the merits' to which res judicata applies." *Stewart*, 297 F.3d at 957; *see also*, Fed. R. Civ. P. 41(b) ("Unless the dismissal order states otherwise, a dismissal . . . except one for lack of jurisdiction, improper venue, or failure to join a party . . . operates as an adjudication on the merits."). In the prior case, I granted Chase and CRC's motion to dismiss under Rule 12(b)(6) and dismissed Aquino's complaint with prejudice. *Aquino*, No. 12-cv-05548-WHO, Dkt. No. 54. That was a final judgment on the merits.

C. Privity Between Parties

Privity between parties exists when the parties in both actions are identical or substantially identical, "that is, when there is sufficient commonality of interest." *Tahoe–Sierra*, 322 F.3d at 1081 (internal quotation marks omitted). CRC, defendant in the present action, was also a defendant in the prior action, and both lawsuits were brought by Aquino. Therefore, the privity element is satisfied. *See Mpoyo*, 430 F.3d at 988 (finding the privity element satisfied where "[t]he plaintiff and defendant are identical in both actions").

Because all three elements necessary for res judicata are satisfied, the doctrine applies, and Aquino is precluded from asserting her current claims against CRC. Accordingly, the motion to dismiss is GRANTED. Because I conclude that Aquino's claims are barred by res judicata, I do not consider CRC's other arguments for dismissal.

II. AQUINO'S MOTION FOR LEAVE TO AMEND

Aquino's motion for leave to amend states that "new information has been discovered and needs to be addressed" and that "new defendants need to be added to the complaint." Dkt. No. 29. The motion is a single sentence long and does not explain the content of the new information or the identities of the new defendants. *Id.* CRC opposes the motion on two grounds: (1) it is procedurally improper in that it does not include a proposed amended pleading as required by Civil Local Rule 10-1; and (2) amendment would be futile. Dkt. No. 30.

CRC is correct that Aquino's motion does not comply with Civil Local Rule 10-1, which requires a party moving for leave to amend to attach to the motion a copy of the proposed amended pleading. Civ. L. R. 10-1. In light of Aquino's pro se status, I issued an order on October 2, 2014 informing Aquino of this deficiency and granting her until October 17, 2014 to supplement her motion with a proposed amended pleading. Dkt. No. 34. However, Aquino did not file a proposed amended pleading by October 17, 2014 or at any time thereafter.

Federal Rule of Civil Procedure 15(a)(2) provides that courts should grant leave to amend "when justice so requires." Fed. R. Civ. P. 15(a)(2). One exception to this generally liberal approach is "where the district court could reasonably conclude that further amendment would be futile." *Sylvia Landfield Trust v. City of Los Angeles*, 729 F.3d 1189, 1196 (9th Cir. 2013).

Amendment is futile where "no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim." *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988).

Amendment here would be futile because all five of Aquino's causes of action are barred by res judicata. *See Patel v. U.S. Bank, N.A.*, No. 13-cv-01625-YGR, 2013 WL 5947377, at *2 (N.D. Cal. Nov. 5, 2013) (holding that amendment would be futile and denying motion for leave to amend where plaintiff's sole claim was barred by res judicata). Further, Aquino submitted three different complaints in her prior action, meaning that the instant complaint represents her fourth attempt to bring claims against CRC and other entities in connection with the same mortgage loan and foreclosure proceeding. *See Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892 (9th Cir. 2010) (stating that a district court may deny leave to amend due to a litigant's "repeated failure to cure deficiencies by amendments previously allowed").

Because I conclude that amendment to Aquino's complaint would be futile, the motion for leave to amend is DENIED. If Aquino has new claims that are not frivolous and are not precluded by res judicata, she may bring them in a different lawsuit.

CONCLUSION

For the foregoing reasons, CRC's motion to dismiss is GRANTED, and Aquino's motion for leave to amend is DENIED. All causes of action in the complaint are DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Dated: October 30, 2014

WILLIAM H. ORRICK
United States District Judge